

Revenue Review

Tennessee Department of Revenue

www.Tennessee.gov/revenue

REVENUE ...
Working For You



July 2006

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Did You Know...

You can receive notices and other publications instantly by signing up on one of the department's ListServes?

Visit our Web site to subscribe to Revenue-News or lists dedicated to county clerks and city officials.

Contact Us:

Tennessee Department
of Revenue
Attn: Taxpayer Services
500 Deaderick Street
Nashville, TN 37242
(615) 253-0600
Statewide toll-free:
(800) 342-1003

Title and Registration Moves to Revenue and Revenue Launches New Web Site

On July 1, 2006, Revenue assumed the operation of Motor Vehicle Title and Registration and Motor Carrier Services formerly under the Tennessee Department of Safety. With this change, Revenue adds 230 employees to the department, bringing the total Revenue employment to more than 1,160. Most Title and Registration Services and Motor Carrier Services remain at their current location as of July 1. However, the issuance of temporary tags formerly at select Tennessee Highway Patrol offices will now be issued by Revenue's employees at the Knoxville, Cookeville, Shelbyville, Chattanooga, Jackson and Memphis field office locations. Some Title and Registration call-center services will transition to the Andrew Jackson Building in Nashville so that you may access those services by calling the statewide toll-free number at (800) 342-1003; Nashville-area and out-of-state callers should call (615) 253-0600.

The transition provided an opportunity to launch a brand new Web site with information on all Revenue services.

"We are excited about the new Revenue Web site. This is a great source for a tremendous amount of information and self-service opportunities for our customers," said Revenue Commissioner Loren L. Chumley.

Visit the new Web site at www.Tennessee.gov/revenue, and stay tuned to the Web site for up-to-the-minute changes on phone numbers or addresses.

2006 Legislative Changes

The Department of Revenue tracked more than 180 bills during the 2006 legislative session. Numerous tax law changes were made during this session. A complete Legislative Summary listing is available on the department's Web site at www.Tennessee.gov/revenue. A complete copy of the public chapters may be found at www.state.tn.us/sos. Summaries of broader interest are included below. Public Chapter Numbers for several bills were not available at the time this edition went to press. The

House and Senate Bill numbers are provided instead.

Franchise Tax and Excise Tax Legislation

REITs. Public Chapter 1019. Persons treated as partnerships for federal tax purposes and who are owned, directly or indirectly, by a real estate investment trust (REIT) are required to pay franchise tax on the greater of net worth or real and personal tangible property in Tennessee. These persons also are now liable for excise tax. A deduction from excise tax is available to any person treated as a partnership for federal tax purposes that directly or indirectly distributes 100% of its net earnings or net losses to a "publicly traded REIT." A publicly traded REIT is defined as an entity which has an election in effect under IRC § 856(c)(1) that files with the SEC and whose shares are traded on a national stock exchange. A deduction is also available for persons treated as a partnership for federal tax purposes that are owned, directly or indirectly, by a publicly traded REIT and distribute only a portion of earnings or net losses to a publicly traded REIT. The person's "net earnings" or "net losses" are calculated by subtracting the amount distributed directly or indirectly to a publicly traded REIT. A schedule should be attached identifying the name and federal identification number of the publicly traded REIT who received the distribution. *Effective date: Upon becoming law.*

Right to Apportion. Public Chapter 1019 provides that a taxpayer may apportion its net worth for franchise tax and its net earnings or losses for excise tax purposes if it has business activities that are taxable both inside and outside Tennessee. A taxpayer is considered taxable in another state only if the taxpayer is conducting activities in that state that, if conducted in Tennessee, would constitute doing business in Tennessee and would subject the taxpayer to the franchise or excise tax. *Effective date: Upon becoming law, and shall apply to tax years beginning on or after Jan. 1, 2006.*

Venture Capital Funds. Public Chapter 1019 amends the exemption provided to venture capital funds to clarify that the capital of the fund may be derived from investments by one or more affiliates, if such affiliates also qualify as venture capital funds. *Effective date: Upon becoming law, and shall apply to tax years beginning on or after Jan. 1, 2006.*

Income Tax Legislation

Public Chapter 1019 creates an exemption for the income from stock in any publicly traded real estate investment trust. *Effective date: Upon becoming law.*

Tax Incentive Legislation

Public Chapter 1019 contains numerous provisions that provide for new or additional credits related to job creation and capital investment in Tennessee.

1) The industrial machinery tax credit that currently applies only against excise tax has been expanded to allow the credit to be applied against franchise tax. The credit can now be applied to 50% of the combined franchise and excise tax liability. If the industrial machinery for which a credit has been allowed is removed from Tennessee during its useful life according to depreciation guidelines, the department may re-capture the credit. *Effective date: Upon becoming law, and shall apply to tax years beginning on or after Jan. 1, 2006.*

2) A tiered jobs tax credit is now available based on the size of a capital investment made during the "investment period" and the number of "industrial wage jobs" created. The "investment period" may not exceed three years from the filing of the required business plan. "Industrial wage jobs" mean full-time employee jobs with wages equal to or greater than Tennessee's average industrial wage for the month of January of the year during which the job was created.

a) A \$500 million investment and creation of 500 jobs during the investment period will yield: i) A \$5,000 per job tax credit subject to the existing rules for use of jobs tax credit; and ii) a \$5,000 annual credit per job created that may be used to offset up to 100% of the taxpayer's franchise, excise tax liability for a tax year, with the eligibility for such annual credit not to exceed 12 years beginning with the first tax year after the investment and job threshold criteria are met. Any unused portion of the annual credit may not be carried forward beyond the year in which the credit originated.

b) A \$250 million investment and creation of 250 jobs during the investment period will yield: i) A \$5,000 per job tax credit subject to the existing rules for use of jobs tax credit; and ii) a \$5,000 annual credit per job created that may be used to offset up to 100% of the taxpayer's franchise, excise tax liability for a tax year, with the eligibility for such annual credit not to exceed six years beginning with the first tax year after the investment and job threshold criteria are met. Any unused portion of the annual credit may not be carried forward beyond the year in which the credit originated.

c) A \$100 million investment and creation of 500 jobs during the investment period will yield: i) A \$5,000 per job tax credit subject to the existing rules for use of jobs tax credit; and ii) a \$5,000 annual credit per job created that may be used to offset up to 100% of the taxpayer's franchise, excise tax liability for a tax year, with the eligibility for such annual credit not to exceed three years beginning with the first tax year after the investment and job threshold criteria are met. Any unused portion of the annual credit may not be carried forward beyond the year in which the credit originated. *Effective date: Upon becoming law, and shall apply to tax years beginning on or after Jan. 1, 2006.*

3) A qualified production company that incurs at least \$1 million in qualified expenses is eligible for a refund equal to 15% of its qualified expenses, provided that the company has established a headquarters facility in Tennessee. If the qualified production company does not have a headquarters facility in Tennessee, then any qualified investor that has a headquarters facility in Tennessee is allowed a refund equal to the amount to which the qualified production company would have been entitled, multiplied by the qualified investor's percentage ownership in the company. "Qualified expenses" are expenses incurred in Tennessee that are determined to be necessary for the production of a movie in Tennessee. *Effective date: Upon becoming law, and shall apply to years ending on or after Dec. 31, 2006.*

Sales Tax Legislation

Sales Tax on Accommodations Provided to Transients. Public Chapter 1019 clarifies the definition of "retail sale," "sale at retail" and "retail sales price" in regards to the sale, lease or rental of accommodations provided to transients. Charges for the use of or the value of any time-share estate and any charges for the use of or the value of the use of a perpetual interest in specified entities whose substantial purpose is the ownership or control of real property shall be excluded from the definition of "retail sale," "sale at retail" and "retail sales price." A corresponding definition of "time-share estate" was added to Tenn. Code Ann. Section 67-6-102 and is consistent with the Tennessee Time Share Act of 1981. *Effective date: Upon becoming law.*

Sales Tax on Vehicles Sold to Military. Public Chapter 1019 clarifies the exemption from sales tax on the sale of a vehicle to an individual called into active military service for the United States from the reserves or National Guard that is stationed outside the United States during hostilities and is entitled to receive combat compensation as determined the U.S. Department of Defense. The exemption from the sales tax will commence from the effective date of the official military orders assigning such individual to the combat zone and will expire within 60 days after the effective date the individual receives military orders releasing him or her from the combat zone. *Effective date: Upon becoming law.*

New ONE-TIME sales tax holiday. Public Chapter 1019 adds a new sales tax holiday commencing 12:01 a.m. on April 27, 2007, and ending at 11:59 p.m. on April 29, 2007. This new sales tax holiday applies to the same items that are exempt during the sales tax holiday occurring on this year from Aug. 4 - 6.

Update: Tennessee's First Sales Tax Holiday: Aug. 4-6, 2006

Tennessee's first annual sales tax holiday begins in **August 2006**. The holiday starts each year at 12:01 a.m. on the first Friday in August and ends at 11:59 p.m. on the following Sunday. For 2006, the holiday will start at 12:01 a.m. on Aug. 4 and end at 11:59 p.m. on Aug. 6.

During the holiday, the following items are exempt from sales and use tax: 1) clothing with a price of \$100 or less per item; 2) school supplies with a price of \$100 or less per item; and 3) computers with a price of \$1,500 or less per item. *Continued on p. 3.*

Tennessee's First Sales Tax Holiday, Cont.

The new sales tax return will be mailed in July. Comprehensive materials designed for consumers and retailers are available at www.Tennessee.gov/revenue. The following list includes some frequently asked questions:

How do I claim the exemption? The exemption is based on the purchase of items that qualify for the holiday. No identification or exemption certificate is required. As long as you purchase an item that qualifies to be sold tax exempt, you should not pay sales tax on the item sold.

What merchants are participating in the sales tax holiday? Merchants who sell the items listed above must participate in the sales tax holiday. If a merchant sells only to other businesses (purchases for a business do not qualify for the holiday), or does not sell items that qualify for the holiday (example: a car dealer) then the merchant is NOT required to participate in the holiday.

My school requires the purchase of a computer with a cost of more than \$1,500. Will I have to pay sales tax if I buy it during the holiday? Yes. The sales tax holiday legislation only exempts computers with a sales price of \$1,500 or less. For those that cost more than \$1,500, there is no provision to exempt a portion of the sales price and tax the remainder. Computers with a sales price in excess of \$1,500 are taxable on the total sales price.

If I place an order for a computer on Aug. 1 and pay for it with my credit card, but it is delivered during the holiday, will it be exempt? No. Qualified items sold to purchasers by mail, telephone, e-mail, or Internet shall qualify for the sales tax exemption if the customer orders and pays for the item and the retailer accepts the order during the holiday period for immediate shipment, even if delivery is made after the exemption period. Therefore, if the computer was ordered and the credit card was charged during the holiday period, and delivery was scheduled to take place after the holiday, the sale would qualify for the exemption.

Can I buy items out of town or out of state and still qualify for the holiday? Purchases can be made from Tennessee retailers, including retailers that sell through the Internet or catalog if those items are to be delivered into Tennessee.

Need more information? Call (800) 342-1003 or e-mail Salestax.holiday@state.tn.us.

Revenue Launches Credit-Card Payment Option Starting with Professional Privilege Tax

In May, the Department of Revenue began accepting credit cards for payment of the professional privilege tax. Professional privilege is the first tax type that customers can pay via credit card to the Department of Revenue through its Web site, www.Tennessee.gov/revenue. The department is working to add this convenient payment option to other online tax filing applications.

"Offering credit card payment is yet another way the Department of Revenue is making significant strides toward becoming a 'digital

department' to serve our customers more efficiently," said Revenue Commissioner Loren L. Chumley. "We are excited to add the credit card payment option for professional privilege taxpayers and look forward to providing this feature to more taxpayers."

The department accepts the following credit cards: MasterCard, American Express and Discover Card. There is an associated 2.49% processing fee.

Frequently Asked Franchise/Excise Tax Questions

Q: Corporation A is a corporation that has assets and whose operations produce income. Corporation B is a corporation that has a net operating loss (NOL) carryover from prior years. As part of a plan of acquisition, Corporation A forms SMLLC, a single member limited liability company. At the time of its formation, SMLLC has no income, expenses, assets, liabilities, equity or net worth. SMLLC is treated as a disregarded entity for federal income tax purposes and for Tennessee franchise and excise tax purposes. Corporation B merges out of existence and into SMLLC. What is the impact of the merger on Corporation B's NOL carryover?

Corporation B's NOL carryover will not survive the merger. Normally, no NOL carryover is allowed in the case of a merger, consolidation or like transaction. Tenn. Code Ann. Section 67-4-2006(c)(3) provides an exception to this rule; when a taxpayer merges out of existence and into a shell entity that has no income, expenses, assets, liabilities, equity or net worth, the NOL carryover of the predecessor taxpayer survives and becomes available to the successor taxpayer. In this case, SMLLC is a disregarded entity that is treated as a division of Corporation A. Corporation B is accordingly treated for Tennessee franchise and excise tax purposes as having merged out of existence and into Corporation A. The exception is not available because Corporation A has assets and income. Corporation B's NOL carryover therefore does not survive the merger.

Q: Does a claim for refund, unaccompanied by documentation supporting the claim, toll your statute of limitations?

Yes. Generally, a claim for refund must be filed in Tennessee within three years from Dec. 31 of the year in which the payment was made. For an excise tax refund resulting from a decrease in net income as determined by an IRS examination, a claim for refund must be filed within three years from the date of such redetermination of net income by the IRS.

Q: Do you require a taxpayer's supporting documentation to be filed with the refund claim?

No. Tennessee code provides that a claim must "set forth each ground upon which a refund is claimed, the amount of such refund, the tax period, the tax type, and information reasonably sufficient to apprise the commissioner of the general basis for the claim." As long as the claim includes these required items, we will accept additional supporting documentation after the initial filing of the claim.

Although we will accept additional documentation, it is important for taxpayers to remember that interest does not begin to accrue on a refund until 45 days from the date the department receives proper proof to verify that the refund or credit is due and payable.

Save the Date: Upcoming Seminars and New Business Workshops (NBW) Across the State

Visit www.Tennessee.gov/revenue for more details.

July

July 12 – NBW, Chattanooga, 8:30 a.m. – 1:15 p.m.
July 13 – NBW, Johnson City, 8:30 a.m. – 11:45 a.m.
July 19 – NBW, Knoxville, 8:30 a.m. – 12:30 p.m.
July 25 – NBW, Nashville, 9 a.m. – 12:45 p.m.
July 27 – NBW, Memphis, 9 a.m. - Noon

August

Aug. 16 – Tennessee Business Taxes, Austin Peay State University, Clarksville, 8 a.m. – 5 p.m.
Aug. 24 – Tennessee Business Tax, DoubleTree Hotel (Middle Tennessee State University), Murfreesboro, 8 a.m. – 5 p.m.

September

Sept. 6 – Tennessee Business Taxes, The Centre at Millennium Park (East Tenn. State University), Johnson City, 8 a.m. – 5 p.m.
Sept. 13 – NBW, Knoxville, 8:30 a.m. – 12:30 p.m.
Sept. 13 – NBW, Chattanooga, 8:30 a.m. – 1:15 p.m.
Sept. 14 – NBW, Johnson City, 8:30 a.m. – 11:45 a.m.
Sept. 14 – NBW, Memphis, 9 a.m. - Noon
Sept. 26 – NBW, Nashville, 9 a.m. – 12:45 p.m.
Sept. 27 – Tennessee Business Tax, University of Tennessee, Knoxville, 8 a.m. – 5 p.m.

October

Oct. 5 – 2006 Business Tax Update, Tennessee Chamber of Commerce & Industry, Millennium Maxwell House Hotel, Nashville
Oct. 18 – 2006 Business Tax Seminar (Association of Government Accountants), Bartlett Performing Arts and Conference Center, Bartlett, 8 a.m. – 5 p.m.
Oct. 25 – 2006 Business Tax Seminar (Association of Government Accountants), Willis Conference Center, Nashville, 8 a.m. – 5 p.m.

November

Nov. 2 – Tennessee Business Tax, University of Tennessee at Chattanooga, Raccoon Mountain Room, 8 a.m. – 5 p.m.

Online Sales Tax Filing Statistics

Month	Number of Returns	Total of Amount Collected
February 2006	14,979	\$142,362,828
March 2006	18,533	\$148,302,297
April 2006	20,910	\$194,326,264

Are you a registered taxpayer? If YES, we need your tax contact's e-mail address, so we can e-mail information in the future. Call toll-free (800) 342-1003; Nashville-area and out-of-state callers, dial (615) 253-0600.

Speakers Bureau

The Department of Revenue operates a speakers bureau. Professionals from across the state are available at no charge for professional groups, civic clubs, special events and academic organizations in Tennessee. Speakers are available to present on a variety of topics, from sales and use tax and franchise and excise taxes to inheritance and gift taxes.

Call (615) 741-3580, e-mail linda.kelley@state.tn.us, or write to Linda Kelley, Tennessee Department of Revenue, 500 Deaderick St., Third Floor, Nashville, TN 37242, to request a speaker. Requesting agencies/organizations should contact the department at least two weeks in advance and provide the following information:

- Date and time speaker needed
- Name of group requesting speaker
- Location
- Topic
- Desired length of presentation
- Number of people expected to attend presentation
- Contact name, address, phone number and e-mail address

Contact Us

- Main hot line: Statewide toll-free (800) 342-1003; Nashville-area and out-of-state callers should call (615) 253-0600.
- Online tax help by e-mailing TN.Revenue@state.tn.us.
- Sales tax holiday assistance by e-mailing Salestax.holiday@state.tn.us.
- Streamlined Sales Tax hot line: In Tennessee, call (877) 250-2299. In Nashville and outside Tennessee, call (615) 253-0752.
- Streamlined Sales Tax online assistance by e-mailing Streamlined.Salestax.QandA@state.tn.us.
- Tax practitioner hot line: Statewide toll-free (800) 387-8395; Nashville-area and out-of-state callers should call (615) 253-0700.
- Local government hot line: (866) 562-2549.
- E-mail updates: Visit our Web site, www.Tennessee.gov/revenue, to subscribe to Revenue-News or lists dedicated to county clerks and city officials.
- Electronic commerce hot line: Statewide toll-free: (866) 368-6374. Nashville-area and out-of-state callers should dial (615) 253-0704.
- Speakers bureau: (615) 741-3580.
- Tax fraud hot line: To report tax fraud, call (800) FRAUDTX (372-8389).

Did You Know...

Tax collections and statistics are a click away on Revenue's Web site? Go to www.Tennessee.gov/revenue.



Authorization number 347193: 140,200 copies: November 2005. This public document was promulgated at a cost of \$0.0555 per copy, Tennessee Department of Revenue.